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Attorneys for *Amici Curiae* 553 Non-Binary Individuals

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

BOYAJIAN PRODUCTS, LLC,

Plaintiff,

v.

ENBY LLC,

Defendant.

No. 3:20-cv-01991-HZ

553 NON-BINARY INDIVIDUALS'
UNOPPOSED MOTION FOR LEAVE TO
APPEAR AS AMICI CURIAE

L.R. 7-1 CERTIFICATION

By and through their respective counsel, *amici curiae* and the parties have conferred regarding this motion and the parties do not object. Further, both parties consent to the relief this motion seeks, which is the filing of the attached brief.

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AMICI CURIAE

MOTION

1. The movants, 553 individuals who are non-binary (or “enby”),¹ by and through their undersigned counsel, seek leave to participate in this case as *amici curiae* in support of Defendant’s Motion to Dismiss.

2. In terms of *amici*’s interest,² this case concerns an alleged trademark for the word “enby,” and an attempt to restrain its use in a descriptive way.

3. *Amici* are all non-binary – or, informally, “enby” – people. These enby *amici* have a profound interest in ensuring that words used to describe their identity are not monopolized and, essentially, taken out of use for the sake of private profit.

4. Put simply, for *amici*, it is vital for enby-oriented business to answer the question “what are you?” with the clear, correct answer: an “Enby[-friendly] Store,” an “Enby[-owned] Store,” or any other manner of store that *exists for and is run by people who are enbies*. *Cf. Filipino Yellow Pages, Inc. v. Asian Journal Publ'ns, Inc.*, 198 F.3d 1143, 1151 (9th Cir. 1999) (“If faced with the question ‘What are you?’ FYP’s Filipino Yellow Pages, AJP’s Filipino Consumer Directory, and the Filipino Directory of the U.S.A. and Canada could all respond in the same way: ‘A Filipino yellow pages.’”). If Plaintiff’s claims proceed, *amici* will be chilled from giving the true, descriptive answers to everyday questions.

¹ A full list of the 553 individual *amici* appears as an addendum to the proposed brief submitted herewith.

² There is no applicable rule of civil procedure for trial-level *amicus* briefs, but Fed. R. App. P. 29 allows filing of a brief either on consent of all parties, or on a motion which states “the movant’s interest” and “the reason why an *amicus* brief is desirable.” While the Court has already set a schedule that includes submission of the Brief, in an abundance of caution, *amici* provide the statements that would be required under the appellate rules without consent.

5. *Amici's* interests are the interest of the community most affected by a decision on the scope of Plaintiff's asserted mark. Their interests – while they overlap with Defendant's – are broader in many ways, including that they represent a much wider swath of the enby community.

6. To that end, *amici* seek to submit a Brief, attached hereto as Exhibit A, advocating for dismissal of the Complaint and against Plaintiff's prayed-for relief.

WHEREFORE, *amici* request that this Court grant this Unopposed Motion for Leave to Appear as Amici Curiae; accept and consider the Brief attached hereto during the disposition of this proceeding; and to deem the Brief attached hereto to be filed or otherwise direct the manner of its filing.

DATED: January 29, 2021.

s/ J. Ashlee Albies
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